

## **FEE WAIVER REQUEST**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EIP requests a fee waiver because “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.* As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

**Factor 1:**        *The Requested Records Concern the Operations or Activities of the Federal Government.*

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), because the requests relates to EPA’s records and communications concerning the EPA EEM process, the status of EPA’s NAEMS data analysis, the SAB Report, and EPA’s actions to regulate AFO emissions pursuant to its EEM process and pending citizen petitions. These records concern EPA’s regulatory responsibilities under the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to Know Act (EPCRA). Final methodologies will provide a basis for future modeling efforts that will directly influence the EPA’s ability to characterize emissions exposure in rural communities.

**Factor 2:**        *Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.*

Disclosure of the requested records is “likely to contribute” to an “increased public understanding” of government operations or activities, 40 C.F.R. § 2.107(l)(2)(ii), because such disclosure will enable EIP and the public to understand the effects of the SAB Report as well as the factors affecting EPA’s decision-making process as the Agency moves forward with the EEMs process for AFOs. Additionally, the requested records will contribute to the public’s understanding of anticipated AFO regulatory responsibilities under the CAA, CERCLA, and EPCRA.

This information is not already accessible through EPA’s website. See Factor 4, below. Moreover, EPA’s activities related to NAEMS and AFO EEMs are not currently clear to the public because of uncertainty arising from the SAB Report and EPA’s increasingly long timeline for establishing AFO EEMs. EPA’s intentions related to pending petitions to regulate AFO emissions under the CAA are also unclear, and the information provided pursuant to this request will contribute to the public understanding of EPA’s consideration of these petitions and its assessment of different strategies to regulate AFO air pollution.

**Factor 3:**        *Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in How the Government is Acting in Response to the SAB April 2013 Final EEMs Report and in How the Government will Regulate Air Emissions from AFOs.*

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about the Government’s efforts to develop EEMs for AFOs. EIP is a national nonprofit environmental organization that has made safeguarding the nation’s air and water one of its top priorities. EIP works to provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects the public’s health. Factory farm water and air pollution is one of EIP’s focal issues and EIP has developed expertise on these issues. EIP has an interest in the quality and implementation of EPA’s EEMs for AFOs. Additionally, EIP has participated in the EEMs process by participating in SAB meetings and relaying information to coalition partners. EIP also submitted comments on the draft broiler and open source EEMs, docket ID No. EPA-HQ-OAR-2010-0960, on behalf of numerous national, regional and local organizations with broad memberships of concerned citizens.

Because of our expertise in this area, EIP is well-prepared to analyze and evaluate the records we receive pursuant to this request, assess them in the context of the statutory mandates of the CAA and other laws, and evaluate whether EPA’s current course of action will result in adequate EEMs. In addition to being able to analyze the information provided to determine whether EPA’s actions are adequate for development of EEMs, EIP has the “ability and intention to convey this information to the public.” 40 C.F.R. § 2.107(l)(2)(iii). EIP is well-prepared to provide plain-language analysis of these documents to citizens’ organizations with an interest in EPA’s actions and to members of the media. EIP frequently drafts and releases data-driven and policy-based reports that break down technical data and complex legal issues for the public. EIP regularly makes presentations to community groups concerning CAFOs and generates press releases concerning CAFO regulation. EIP attorneys have presented on NAEMS and EPA’s EEM process on a CAFO air pollution panel at the 2012 Public Interest Environment Law Conference at the University of Oregon and at a 2011 Sustain Rural Wisconsin Network forum in Madison, Wisconsin. Additionally, EIP released a report in March 2011, titled “Hazardous Emissions from Factory Farms,” based on initial NAEMS results obtained through EIP’s December 2010 FOIA request, which received significant media coverage.

Finally, EIP regularly collaborates with national, regional, and local environmental and agricultural organizations, such as the Center for Food Safety, the Center on Race, Poverty & the Environment, Food and Water Watch, Illinois Citizens for Clean Air and Water, Iowa Citizens for Community Improvement, Midwest Environmental Advocates, the Sierra Club, and the Socially Responsible Agriculture Project. EIP shares information it receives about AFO regulation and EPA’s EEM process with these organizations and regularly collaborates with them to submit public comments related to AFO air pollution. EIP will share this information received pursuant to this request with these organizations and their memberships through list-servs, community meetings, and other fora.

**Factor 4:      *The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.***

The public’s understanding of government operations or activities related to EPA’s EEMs process “as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent.” 40 C.F.R. § 2.107(l)(2)(iv).

Because EIP, our coalition partners, and the public know little about the EPA's response to the SAB Report or about the status of the EEM process or the two pending citizen petitions to regulate AFO air emissions, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request. The EEM process and EPA's determinations on the pending citizen petitions will have a defining impact on public access to information under CERCLA and EPCRA and CAA protections for rural communities across the United States. Those communities living near AFOs are directly affected and particularly interested in EPA's decision-making process surrounding the development of EEMs, but the public at large will also benefit from insight into the EEM process and EPA's ongoing consideration of the petitions. None of the documents requested by EIP are currently available to the public on the Internet or have been previously published by EPA. EIP and its coalition partners have demonstrated their ability to synthesize and widely disseminate pollution data and other public records related to AFO and CAFO regulation to the public, and these activities have significantly contributed to public understanding of EPA's regulatory activities.

In addition, this request also meets the second fee waiver requirement, that the request "is not primarily in the commercial interest of the requester.," 40 C.F.R. § 2.107(l)(1). The requester, EIP, is a 501(c)(3) nonprofit organization and does not have any "commercial interest that would be furthered by the requested disclosure" of information.<sup>1</sup> 40 C.F.R. § 2.107(l)(3)(i). Indeed, EIP's sole interest in obtaining the requested information is to broaden public understanding of EPA's decision-making process concerning the development of EEMs for AFOs.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

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<sup>1</sup> Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests," in particular those from journalists, scholars and nonprofit public interest groups. See *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).